

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

March 30, 2007

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In the Matter of  
Partners Realty Trust

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Docket No. 2006-190  
File No. SE26-359  
Freetown

**RECOMMENDED FINAL DECISION**

David J. Megna, Esq. filed a request for an adjudicatory hearing on behalf of Partners Realty Trust, concerning a Superseding Order of Conditions (SOC) issued to the Trust denying the proposed project. The work proposed involves “construction of a roadway with related grading and drainage work” within Riverfront Area and Bordering Vegetated Wetland. SOC Cover letter, p.1. The Department’s denial is founded upon its conclusions that no alternatives analysis was provided as required by 310 CMR 10.58, and that the proposed alterations to Bordering Vegetated Wetlands could be avoided or minimized by redesigning or repositioning the proposed detention basin. SOC Cover letter.

Abutting property owners, Roger and Mary LaFountain, filed a Motion to Dismiss on January 16, 2007 claiming the Notice of Claim was deficient by not identifying the reasons the SOC is inconsistent with the wetlands regulations, why the SOC does not contribute to the protection of the interests of the Act, and failing to specify the relief desired.<sup>1</sup> A Prescreening

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<sup>1</sup> The Motion alleges that the LaFountains own property abutting the project site, and that they requested the issuance of an SOC from the Department.



Conference was held on February 8, 2007. Fred Smith attended the conference for the applicant / petitioner. Because the Motion had not been properly served on all parties, copies were provided at the conference and a new deadline for filing any response to the Motion was established, February 19, 2007.

No responses to the Motion have been filed.<sup>2</sup> I conclude that the petitioners no longer intend to prosecute this Claim and recommend its dismissal for lack of prosecution pursuant to 310 CMR 1.01(5)(a)15.f.vi and 310 CMR 1.01(10). If this decision is adopted the SOC will be made final.

### **NOTICE**

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her final decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c.30A. The Commissioner's Final Decision is subject to rights and reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any portion of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

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<sup>2</sup> Although the abutting property owners filed the Motion to Dismiss, they had not been granted party status through a motion to intervene. Pursuant to 310 CMR 10.01(11) any person may file a motion. No objection to the abutters' Motion was made by the applicant/ petitioner or MassDEP.

This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

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Ann Lowery  
Presiding Officer

*Adopted by Acting Commissioner Arleen O'Donnell April 3, 2007.*